

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 - - - - - X
4 UNITED STATES OF AMERICA : CR-09-833
5 -against- : U.S. Courthouse
6 PHILIP BARRY, : Brooklyn, New York
7 DEFENDANT. :
8 - - - - - X June 17, 2011
9 12:00 o'clock noon

10 TRANSCRIPT OF SENTENCING
11 BEFORE THE HONORABLE RAYMOND J. DEARIE
12 UNITED STATES DISTRICT JUDGE

13 APPEARANCES:

14 For the Government: LORETTA LYNCH
15 United States Attorney
16 271 Cadman Plaza East
17 Brooklyn, New York 11201
18 BY: JEFFREY GOLDBERG
19 JOHN NOWAK
20 Assistant U.S. Attorneys

21 For the Defendant: LISA HOYES, ESQ.
22 MICHAEL WEIL, ESQ.

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1 THE CLERK: Criminal cause for sentencing,
2 09-CR-833, United States versus Philip Barry.

3 MR. GOLDBERG: Good afternoon. Jeffrey Goldberg
4 and John Nowak for the government, along with Special Agents
5 Thomas McDonald, Matthew Taylor and Mark Petruzzi from the
6 FBI.

7 MS. HOYES: On behalf of Mr. Barry, Federal
8 Defenders by Lisa Hoyes as well as Mr. Michael Weil.

9 THE COURT: Good afternoon.
10 Good afternoon, Mr. Barry.

11 Are you ready to proceed?

12 MS. HOYES: Yes.

13 THE COURT: Have you had an opportunity to carefully
14 review your presentence report, sir?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: The addendum to the report?

17 THE DEFENDANT: Yes.

18 THE COURT: Have you read the submissions filed on
19 your behalf?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you feel prepared to go forward with
22 sentence this afternoon?

23 THE DEFENDANT: I do.

24 THE COURT: You have the right to address the court
25 before sentence is imposed. I would give you the opportunity

1 to do so that in just a few minutes. Feel free to say
2 anything you think is appropriate before I finalize my
3 judgment in the case; do you understand?

4 THE DEFENDANT: I do.

5 THE COURT: Are you satisfied with counsels'
6 representation?

7 THE DEFENDANT: Yes.

8 THE COURT: My file reflects a copy of the
9 superseding indictment and the presentence report and the
10 addendum to the presentence report. I received a
11 recommendation. I know you're aware of it because it's been
12 referenced in the submissions.

13 I have Ms. Hoyes's letter of May 23rd with
14 accompanying exhibits. I have Mr. Goldberg's letter of
15 June 13th covering a letter written on behalf of the late
16 Margaret Hartman. I have the government's sentencing
17 memorandum with its exhibits, all of which I've read on a
18 number of occasions.

19 Just a few moments ago, I was handed statements
20 which I understand are going to be delivered by some of the
21 victims in the case. I have just been able to glance at
22 those.

23 Am I missing anything pertinent to today's
24 proceedings?

25 MR. GOLDBERG: I don't know if you referenced the

1 defendant's April 4th, 2011 objections.

2 THE COURT: Only in an indirect way by virtue of
3 the addendum to the report.

4 MR. GOLDBERG: Nothing beyond that.

5 THE COURT: The only objection, as I understand it,
6 that is outstanding has to do with a two level adjustment
7 regarding the bankruptcy proceeding. Am I correct on that?

8 MS. HOYES: That's correct.

9 THE COURT: I frankly don't know -- I doubt it
10 would have any real bearing on the sentencing of the case. My
11 view of it is the Probation Department has it right and that
12 the antics before that panel were very much part and parcel of
13 the crime in question. Indeed, if I recall correctly, there
14 was evidence at the trial related to the bankruptcy
15 proceeding. I think the adjustment is entirely appropriate.

16 That being the case, I will turn it over to the
17 defense.

18 MR. WEIL: I think Ms. Hoyes is going to speak to
19 the 3553 factors. I'm wondering if I may briefly be heard on
20 the bankruptcy issue as well, the overlapping enhancements.

21 If I could be heard, the evidence at the trial,
22 there was evidence at the trial from the bankruptcy
23 proceeding. It was devastating trial evidence because it
24 showed Mr. Barry telling the bankruptcy proceeding new money
25 was being paid out to old investors, entirely consistent with

1 the government's theory in the case.

2 By the time Mr. Barry filed for bankruptcy in this
3 case, he had already met with Mr. Goldberg, had already turned
4 over the contents of his office. One of the statements that
5 the government says was fraudulent to the bankruptcy court was
6 that he indicated he only had taken in \$10 million or so over
7 the last decade. The trial evidence showed somewhere in the
8 nature of over \$20 million, but it was entirely clear from the
9 trial Mr. Barry had no overarching books. The government
10 showed money that came in was quickly being disbursed to
11 investors. In their seizure of documents, consensual seizure
12 of documents from his office, there's no indication he had any
13 overarching books showing how much money in total he was
14 taking in, except these fairly primitive manila folders of
15 each investor.

16 I don't think what occurred in the bankruptcy really
17 related to the scheme under the government's theory of the
18 case. At a certain point, Mr. Philip Barry was besieged by
19 creditors, obviously trying to hold on to this property he had
20 upstate with the purpose of developing it. He went to the
21 government in an effort to keep creditors at bay. He went to
22 the bankruptcy court with an effort to keep creditors at bay.
23 Ultimately, as the government pointed out, that property was
24 sold and no unsecured creditors recovered anything, didn't
25 cover the mortgages on the property. So, I don't believe the

1 bankruptcy proceeding really relates to the case.

2 Mr. Barry checked off on his pro se bankruptcy
3 petition, which I think often has errors, that he had
4 somewhere from 200 to a thousand creditors and although he did
5 not list them by name, the creditors at that point, I believe,
6 the government had his files at that stage. There are several
7 admissions in the bankruptcy proceedings, even in the
8 government's attachment but really help prove the government's
9 case. We submit it's not relevant to this case. It was not
10 part of an effort to avoid law enforcement or part of the
11 scheme.

12 The other thing I'll speak to briefly, the
13 guidelines, for departure, even if it's not a departure, it
14 ties in with 3553 in any case which is our argument for
15 overlapping enhancements as recognized by the Second Circuit
16 in the Lauersen, Jackson line of cases.

17 It is true each of the enhancements imposes on
18 Mr. Barry, that's a different harm. We're not alleging double
19 counting. The victims is one harm, the amount of money is
20 another harm. The fact he was an investment advisor, they're
21 all distinct harms but they are somewhat related. The number
22 of victims is related to the investment advisor enhancement.
23 It does have to do with the fact he was essentially dealing
24 with consumers, dealing with individuals as opposed to dealing
25 with defrauding a single company. The number of victims

1 relates, obviously, to the loss amount and warrant separate
2 punishment. The purpose of the Lauersen, Jackson line of
3 cases, when the numbers get this high, the impact is greater
4 than the Sentencing Commission may have envisioned, the
5 investment advisor enhancement adds a decade to his sentence.
6 The defendant does not dispute each of these separate harms
7 should be individually accounted for, but at these levels of
8 the guidelines grid, we think they bear too much emphasis on
9 the sentence.

10 THE COURT: With respect to the latter, I think you
11 have a point. I don't question the wisdom of those cases.
12 We've all pretty much implemented that rationale when the case
13 called for it. As to the bankruptcy, I could not disagree
14 more. Mr. Philip Barry, you remember the frustration of the
15 examiner that was played during the trial as Mr. Philip Barry
16 disassembled and answered questions with questions. As
17 relevant conduct, it was part and parcel, in my view, of this
18 overall scheme regardless of the fact he sought refuge before
19 the bankruptcy court and in the U.S. Attorney's Office. So, I
20 don't know it impacts the sentence at all but that's where I
21 come out.

22 I have a couple of questions before we go any
23 further, certainly the 3553 factors. Restitution, are we all
24 on the same page there?

25 MR. GOLDBERG: We are.

1 THE COURT: What is the number?

2 MR. GOLDBERG: The number in the addendum which is
3 \$24,156,540.

4 THE COURT: What is the status of the bankruptcy?
5 More specifically, the property in Sullivan County, what do we
6 know about that?

7 MR. NOWAK: There was an auction that took place. I
8 believe those properties were heavily mortgaged and the entity
9 or individuals that held those mortgages were the individuals
10 who ultimately came away with the properties as a result of
11 the auction.

12 THE COURT: There were no net proceeds?

13 MR. NOWAK: I don't believe, if there were any --
14 it was de minimis.

15 THE COURT: Ms. Hoyes?

16 MS. HOYES: Thank you. There are certainly many
17 issues in this case that are clear-cut. Mr. Barry lied to his
18 investors. The investors suffered tremendous losses and I
19 expect we will hear more about that today. I know your Honor
20 is already well versed in those facts that are clear.

21 There are other aspects of this case that are not as
22 clear-cut, we do think merit your Honor's consideration when
23 you arrive at a just sentence in this case. For the 30 years
24 Mr. Philip Barry operated the Leverage Group, as I think your
25 Honor well knows by now, he never lived in a nice place. He

1 never had nice clothes, nice jewelry, nice electronics. He
2 never took a vacation. He never funneled money into secret or
3 hidden accounts. The fact that he didn't use the investors'
4 money to live a life of luxury for himself, that sets him
5 apart from other people who have committed this type of crime.

6 Over the course of the 30 years that this was going
7 on --

8 THE COURT: Bear with me a second. I'll let you go
9 on.

10 What difference does it make? I grant you that
11 there are characteristics to this case that differ from many
12 others.

13 Does it make any difference to these folks?

14 MS. HOYES: I don't believe it makes a difference
15 to the folks that are going to be in court today. It does
16 make a difference to many of the investors. You did see
17 letters from some of them who do consider, who did consider a
18 bigger picture, not just what the financial loss to them
19 meant, but they considered he was not a Bernard Madoff type
20 that was walking around living the life of luxury at their
21 expense. That did matter to the investors. It should matter
22 to the court when considering all the factors to determine
23 what the right sentence for this man is.

24 As I understand, I certainly respect the investors'
25 position. I understand it does not affect how this event has

1 changed their lives, but I do think it's something the court
2 should consider in evaluating this case in the rest of the
3 world.

4 I'm saying over the 30 years Mr. Philip Barry did,
5 of course, receive large amounts of money, sometimes in lump
6 sums. He had access to a lot of money, certainly had many
7 opportunities to cash out, just take the money and run away.
8 He didn't do that. He didn't do that up until the moment when
9 he walked into the U.S. Attorney's Office, up until the moment
10 you'll hear later he was arrested sitting in his office in Bay
11 Ridge. I think the fact that he didn't do that speaks to his
12 intentions in operating this scheme. It suggests something we
13 have suggested all along which is that Mr. Philip Barry hoped
14 and believed and -- granted it may have been entirely a
15 deluded belief -- but he did believe he could make this work
16 somehow. He believed he could make his investors whole. We
17 submit he was trying to do that for 30 years. He certainly
18 may have been a hamster on a wheel. We don't dare excuse the
19 lies he told to keep that wheel moving but it was always to
20 make his investors whole, not to make himself rich.

21 Once again, the fact he didn't use this money in the
22 most obvious way, when you read about, really gets to it on a
23 gut level, people who run around and live lives of luxury, the
24 fact he didn't do that sets him apart from other Ponzi
25 schemers. In this case, it militates against a guidelines

1 sentence which, for Mr. Philip Barry, would amount to a life
2 sentence, likely.

3 The Department of Probation certainly evaluated this
4 case with care. I submit probation has seen more cases of
5 this nature than probably anybody in this courtroom. After
6 speaking to victims and speaking with the government,
7 reviewing numerous documents, the Department of Probation
8 determined the appropriate sentence for Mr. Philip Barry is
9 15 years. We ask that you not sentence Mr. Barry to more time
10 than what the Department of Probation has recommended.

11 THE COURT: Thank you, Ms. Hoyes.

12 Sir?

13 MR. GOLDBERG: At this time with the court's
14 permission, we have seven individuals who would like to come
15 up and make short remarks. We would first like to invite
16 Frances Monteleone.

17 THE COURT: Good afternoon. Thank you for coming.

18 MS. MONTELEONE: Good afternoon. Thank you very much.

19 On behalf of the Monteleone family, I want to thank
20 you for this opportunity. I would like to share my feelings
21 today before you decide on the sentencing. I would like to
22 speak on behalf of my family.

23 Phil Barry is a thief. Greed is what led him into
24 his life style. Philip Barry stole my money and he also stole
25 my future. He's a criminal who knowingly hurt the lives of me

1 and my family members.

2 We believed that he was a financial planner in the
3 Brooklyn community who was honest and professional. He took
4 \$215,000 of the total amount of my divorce settlement and
5 convinced me that it would be invested in a secure retirement
6 account, an IRA. He described it as the safest retirement
7 account out there.

8 He lied to me as he lied to all his clients, all
9 hard-working individuals who were trying to invest their money
10 safely.

11 Your Honor, I'm a registered nurse. I need a safe
12 and secure retirement account. Philip Barry assured me that
13 this was what I would accomplish by investing with him.

14 I work with the elderly and infirm every day. I see
15 the effects that poverty has on illness and access to health
16 care. To grow old is difficult but to grow old poor is
17 tragic.

18 Because of Philip Barry, this will be how I have to
19 face my future. Philip Barry robbed me. He's just like a
20 bank robber, under no uncertain terms. He robbed my parents,
21 my dad, once a struggling tailor in Bay Ridge who trusted him
22 like a friend, is now a sick and suffering soul who prays day
23 and night to help his family. My mom is a devoted housewife
24 who is now so sick she's unaware of the pressure that my
25 86-year old dad hides from her as he sinks into financial

1 poverty.

2 Phil convinced my dad that he was the most competent
3 and trustworthy financial planner in the neighborhood. He
4 convinced my dad that he could trust him with the welfare of
5 his entire family. This disaster is now destroying my dad's
6 health. Is this the way a decorated World War II veteran
7 should spend his final days?

8 He robbed my sister. Linda works at a New Jersey
9 factory and at 64 years old cannot afford to lose a penny,
10 never mind her thousands she trusted with Phil. Her health is
11 poor, but she now has no hope of decreasing her 60-hour work
12 week.

13 He robbed my daughter, Elyse, at the time was a poor
14 graduate student who struggled to save some money towards an
15 IRA, but had to learn a hard lesson her money was stolen by a
16 trusted family friend of her beloved grandpa. Her IRA never
17 existed.

18 He robbed my sister Marianne, a devoted New York
19 City school teacher who was saving to supplement her
20 daughter's wedding.

21 He robbed my brother. My brother invested with
22 Phil, our family friend, so-called family friend, hoping to
23 keep some money safely invested for his daughter and his son
24 Frank Junior who has autism.

25 Do we sound like a family who would deliberately

1 invest in a get-rich-quick scheme orchestrated by Philip
2 Barry? Phil committed a serious crime. He's the bank robber
3 who broke into our family finances and stole our money.

4 The money is nowhere to be found. Could all the
5 millions he stole really be gone?

6 Did he use his real estate scheme as another ploy
7 and excuse where his money disappeared to? I believe that if
8 he ever gets out of jail, there's much more money of ours
9 waiting for him. The possibility that more money is hidden is
10 very real and the probability that he will find money in the
11 pockets of new victims is definite. He's not to be trusted
12 nor is he safe in this community. He's only successful as a
13 slick, mean, lying criminal, nothing more. He will rob again
14 because that is all he knows how to do.

15 So, where am I today? I have \$35,000 in legal fees
16 I am paying off. Letters come to my door every day from banks
17 and lawyers and these are constant and upsetting reminders of
18 my tragedy. My \$215,000 is gone.

19 Here is how my life plays out. If I manage to save
20 \$100 per paycheck for my 52 weeks of pay per year, that totals
21 \$5,200. It would take 41.3 years to save my money. Is this a
22 sensible and secure plan for a 55-year old woman? The stress
23 and anxiety of this reality is constant.

24 Your Honor, my pain won't end at the sentencing of
25 Philip Barry, but your Honor, I do request that his sentence

1 should be just and should reflect the many years of suffering
2 that I will have to continue to experience. For me, it's \$100
3 a week for 52 weeks for 41.3 years. Your Honor, let justice
4 be served. Philip Barry deserves the maximum sentence.

5 Thank you very much.

6 THE COURT: Thank you, Ms. Monteleone.

7 MR. GOLDBERG: The government calls Linda Poluha.

8 MS. Poluha: My name is Linda Poluha. I want to
9 thank your Honor and the federal agents for pursuing this
10 case.

11 There is no way to explain the extent of pain and
12 suffering you have inflicted upon my family. I will endeavor
13 to do this as this is my chance, my only opportunity for the
14 financial and emotional hardship you have brought upon us.
15 You have altered our lives forever. My husband and I, as well
16 as my parents, my children, siblings, who were all investors
17 have lost everything. We both worked two jobs just to pay our
18 bills. We should be contemplating retirement. My elderly
19 parents have no home, moved into subsidized housing. My
20 daughter lost her savings. My daughter now struggles to pay a
21 student loan that should have been covered by this investment.

22 During a simple conversation between co-workers,
23 your sister-in-law Maria Barry offered your name as a reliable
24 financial investor that they never lost money in. Upon
25 contacting you, I explained I required a no-risk investment,

1 especially for my parents and for myself. You told me there
2 is no way to lose money in your investment. You turned out to
3 be a liar, a thief, a predator who preyed on innocent people.
4 You have robbed our family of life savings and more. You have
5 forced us to live from paycheck to paycheck in fear. We worry
6 endlessly about my parents, the unfortunate circumstance you
7 left for my father who has worked as a husband all his life,
8 developed Parkinson's disease. My mother must care for him
9 24 hours a day, seven days a week as we're unable to afford to
10 pay for any aide or assistance.

11 My father believed in the American dream, that if
12 you worked hard enough, saved for the future and planned
13 ahead, there would be enough to take care of you and a little
14 left for the generation ahead. A large majority of that money
15 was his.

16 Your agreed and selfishness has caused us pain and
17 hardship we would never recover from, no longer going out to
18 dinner, events. Shopping for groceries has become a painful
19 process as I must pick and choose my purchases very carefully.
20 Vacations are a memory, a luxury we can no longer afford. We
21 work all the time just to survive.

22 I respectfully request the very maximum penalty
23 possible for these horrendous crimes be imposed. There should
24 be no parole considered until full restitution is made to all
25 of us. The location of a federal prison that you're assigned

1 to should be hard and the farthest away from your family and
2 friends. There's no punishment near enough. If there was
3 still such a thing as a chain gang, I believe that's what you
4 deserve because that's what my life is like.

5 I am up at 4:00 o'clock in the morning. I go to bed
6 at midnight seven days a week. The only thing that bothers me
7 more than anything, the judge will sentence you but my federal
8 tax dollars will make sure that you have three square meals of
9 food on your plate, a roof over your head while the rest of us
10 will still be struggling for years to compensate for the
11 damage and losses you have caused us.

12 Thank you very much.

13 MR. GOLDBERG: Mary Cameron.

14 MS. CAMERON: Your Honor, and all present, my name
15 is Mary Cameron. I'm a creditor in the Philip Barry cases. I
16 have been victimized by being fraudulently led astray by
17 Mr. Philip Barry in the hopes I would be making a good
18 investment with someone who claimed to have had a successful
19 business for over 30 years.

20 I gave Mr. Philip Barry my money in good faith and
21 belief that I would get a return on my investment of
22 12 percent per year. However, I was a victim of bounced
23 checks and promises that the money would be sent to me soon,
24 but soon never came.

25 Mr. Philip Barry, by his criminal and fraudulent

1 behavior, has affected my finances for years to come, if not
2 for the rest of my life. He has almost ruined the quality of
3 my life and probably has ruined the quality of the many lives
4 of creditors who trusted him and he knowingly and willfully
5 betrayed them with his fraudulent behavior and actions.

6 Many children and grandchildren of creditors who
7 invested with him may never be able to attain a higher
8 education such as college and evolve into a better existence
9 because each of the funds intended for this purpose, for his
10 criminal fraudulent purposes, Mr. Philip Barry has taken my
11 money and I have nothing to show for it. By his actions, I
12 have been up many a restless night worrying about my money and
13 if I would ever see it again. I have had a big hole put in my
14 finances which causes me to be frugal in my spending, to deny
15 myself some of the items I would buy, the entertainment and
16 the dinners out I would enjoy, right down to the food I would
17 eat and also buy.

18 The cruises I would have gone on, the nice hotels I
19 could have stayed in are all of the many things I have to
20 abandon as a result of Mr. Barry taking my money with no
21 conscience and investing it in his own name in property.

22 I will have to ride subways and buses instead of
23 taking taxis, stay home instead of going out to movies and
24 shows. I will have to budget myself in many regards, much
25 more severely than I normally would, all due to Mr. Barry's

1 fraudulence. This will be a continuing problem and nonstop
2 for many years to come and maybe for the rest of my life
3 because of Mr. Philip Barry.

4 I gave Mr. Philip Barry \$70,000 in total in checks
5 of which amount he paid back 7500, making it a total of
6 \$62,500 that he stole from me. By now, it should be well over
7 \$100,000 if I had received the 12 percent return on the money
8 and \$83,000 or more if I had invested it in the stock market
9 in the form of dividends returned if I had invested in a stock
10 such as AT&T.

11 After two and a half years, the interest payments on
12 my investment with Mr. Philip Barry ceased. Mr. Barry had
13 written out three checks to me that bounced. When I attempted
14 to cash them and probably written out more bounced checks,
15 that those I have evidence of.

16 All this caused me great concern and worry. All
17 these fears that I had have turned out to be well founded. I
18 was up at night unable to sleep and kept worrying during the
19 day where is my money? All Mr. Philip Barry would do when I
20 telephoned him on many occasions to ask for my money was to
21 say it was coming soon. Well, soon never came.

22 It took me many years to save \$62,500 from my salary
23 when I was employed. I could have bought four cars with the
24 money I gave Mr. Barry. I could have gone on many vacations
25 with the money I gave Mr. Philip Barry. This has caused me

1 deep concern and worry due to this fraudulent behavior on his
2 part by his deception and conjuring me into believing he was
3 investing my money in options instead of buying real estate in
4 his own name with my money.

5 The giant hole he has put my finances has led me to
6 live a more frugal existence, deny myself what I thought would
7 be the added pleasures that I had earned as a reward for
8 saving my hard earned money and then putting my trust in
9 Mr. Philip Barry to invest it in an honest manner.

10 When I asked the convicted fraudulent criminal that
11 he has been determined to be for a 1099 form to report my
12 income to the IRS, Mr. Philip Barry told me he did not issue
13 1099s. I asked him how was I to report this money that he
14 paid me as interest as a return on my investment to the IRS?
15 I was told by Mr. Philip Barry that he invested it in options
16 and that they were not taxable by the IRS. Later on I found
17 out this was not true, that indeed options were taxable by the
18 IRS.

19 My many years of hard work in order to earn the
20 money I invested with Mr. Philip Barry have all been in vein.
21 I feel he should also spend many years in a prison to ponder
22 and reflect upon all the pain and anguish he has caused me by
23 his fraudulent and deceptive behavior which has brought the
24 suffering to myself and to the creditors who invested with
25 him.

1 Yet, I believe he doesn't think he's done anything
2 wrong and continues to behave and give the impression that he
3 was a businessman who was making money for his clients and
4 they, the creditors, believed him.

5 It is beyond my comprehension how anyone could feel
6 sympathy for Mr. Philip Barry when they have been so deceived.
7 It's if as they had been brainwashed; that they could feel the
8 strange loyalty to someone who fraudulently took their money
9 and deceived them into believing that he, Mr. Philip Barry,
10 was investing theirs and my money in an honest manner. It
11 reminds me of the Stockholm Syndrome where the hostage starts
12 to look up to their captors as if they were saviours and
13 masters. A typical example would be the Patty Hearst
14 syndrome -- episode.

15 Truly, in my opinion, this is a con man who still
16 deceives and would deceive and defraud tomorrow if he were
17 given a chance to do it all over again. He has a good story
18 and a personality that could be persuasive but this was the
19 danger that I did not see until it was too late and had lost
20 my hard earned money that I had saved for many years. I
21 trusted him but have been enlightened by the fact I was
22 deceived and lost the money I gave him through his fraudulent
23 and criminal behavior.

24 He appeared to have had no conscience about doing
25 this to me or any of his creditors and if given the chance

1 today, I believe he would start all over again with his
2 fraudulent illegal behavior and actions. These actions may
3 have caused many a grandchild and a child of a creditor to be
4 out the money put aside and invested for their education. Now
5 they may be working in a hot short-order soup kitchen instead
6 of law clerking in a law office and/or assisting a physician
7 in a surgery or, for that matter, being an attorney or a
8 surgeon.

9 Your Honor, I hope Mr. Barry's sentence will be
10 carried out to the maximum punishment permitted by law for all
11 the mental and emotional anguish he has caused me and would
12 cause me in the future as a result of his fraudulent and
13 criminal activity. Also, he must realize how in our maturity
14 of years I myself and we the creditors, who have worked hard
15 to earn our money and trusted him will now have to live with
16 less and our dreams of a comfortable retirement to be far less
17 comfortable.

18 I am not the only one who was a victim. There are
19 many others in the hundreds and possibly thousands he has put
20 a big dip in their finances and caused them pain and
21 suffering, both mentally, emotionally and financially.

22 I trusted him and he betrayed that trust. For the
23 many years of suffering I have endured and will endure, not to
24 mention all his many other creditors, he deserves to be
25 spending many years in a prison and at a maximum-secured

1 prison doing hard labor, like I have done to earn the money I
2 gave to him to invest in what I believe to be an honest manner
3 for me -- paying for the crime he has committed and been
4 convicted of.

5 I pray and beseech your Honor will consider this
6 when making your judgment on his sentencing. This criminal
7 needs to be in jail where he can no longer penetrate the minds
8 and monetary savings of innocent and naive folks with his lies
9 and fraudulent schemes and in so doing betray their trust.

10 His nonchalant attitude is frustrating and he thinks
11 he has done nothing wrong. He has. I sincerely hope he will
12 have an appropriately long time in prison to ponder the truth
13 and realize the pain, loss and misery he has brought into
14 people's lives for the rest of their lives by his criminal and
15 fraudulent activities.

16 Thank you, your Honor, for listening.

17 THE COURT: Thank you, Ms. Cameron.

18 MR. GOLDBERG: Your Honor, Carl Gambello.

19 MR. GAMBELLO: Thank you, your Honor, for hearing
20 me out.

21 I'm hoping this will be brief. I was in my 50s when
22 I made my financial investment with Philip Barry. That meant
23 all of that time I accumulated monies because I worked for it.
24 I was about to retire and felt confident that between my
25 personal income, personal nest egg, my social security I would

1 benefit from, both my wife and me, live comfortably for our
2 remaining days. That was my plan.

3 Like I've heard before, I was looking for a safe
4 investment and consequently I was enticed to invest in the
5 Leverage Group by Philip Barry because I thought he was a
6 smart guy and I thought the Leverage Group, although I was not
7 sure how it was, how it was put together, would be sufficient
8 because there were so many of us that were in this plan, how
9 could I not partake of something that could be beneficial?

10 Philip Barry, he's exaggerated false representations
11 of the Leverage Group, guaranteeing a high interest rate,
12 encouraged me to invest my monies with Philip Barry and the
13 Leverage Group but now most of that money is gone. That is to
14 my embarrassment.

15 However, my losses and mental injuries are not only
16 monetary, my self esteem and personal self worth have suffered
17 greatly. I was so embarrassed about being duped, taken in by
18 Philip Barry that I could not bring myself to seek help from
19 my family, my friends and even my wife, Carol. We've been
20 married almost 20 years, but due to my -- the record is the
21 loss of her confidence in me and trusted in me, I'm sure at
22 least contributed to her deciding that "I don't want to be
23 around this guy. I have to watch what I do? I work hard.
24 So, I don't want him sucking me into something that nothing is
25 going to be beneficial."

1 My health issues have exacerbated. The emotional
2 stress, the person from this ordeal, exaggerated in my
3 multiple sclerosis.

4 Currently, although I started out fine and I was
5 well thought, an athlete for many years, now I'm dependent on
6 a power scooter because there's nothing I could do about MS
7 but I can endure those things, except this, this is worse with
8 Philip Barry and the Leverage Group. So now I'm dealing with
9 this and trying to make a life with this scooter.

10 All I want to say is the loss of my so-called
11 investment with Philip Barry has totally devastated my life.
12 Hopefully, that will contribute to a decision to have him pay
13 the price because that's what I think is required.

14 I would rather there would be no worse. I would
15 rather life would be fine but that's not so. He was a fraud.
16 He tricked everybody. I thought at one time I was a pretty
17 smart guy. I realize this man was smarter. He duped me and
18 that is a price I have to live with forever.

19 Thank you.

20 THE COURT: Thank you, Mr. Gambello.

21 MR. GOLDBERG: The government invites Monica
22 Russell who will speak primarily on behalf of the late
23 Margaret Hartman.

24 MS. RUSSELL: Good afternoon, your Honor.

25 Margaret Hartman was defrauded by Philip Barry over

1 a period of about 18 years from 1988 until her death in 2007
2 at the age of 99. She originally was introduced to Mr. Philip
3 Barry through a Catholic organization called the Padre
4 Foundation and the fact she met him through this organization
5 really led her to trust him because he was Catholic as well.

6 She started investing with him shortly before her
7 husband died Ms. Hartman was originally from Shanghai. She
8 was a widow. She lived alone. She didn't have any children.
9 I think those factors were reasons that she was more
10 susceptible to being manipulated by Mr. Philip Barry.

11 In January of 2006, Mrs. Hartman's niece, Rosie
12 Smith, came to Queens to visited Maggie and was helping her,
13 making the move to Canton, Ohio into an assisted living
14 facility. She was 97 at the time. She had dementia, not
15 competent, wasn't able to take care of herself. Rosie was
16 helping her take care of her financial matters. She knew that
17 Maggie had invested a substantial portion of her savings with
18 Mr. Philip Barry. Maggie told Rosie she was very upset with
19 Mr. Philip Barry because she kept asking him for her account
20 statement and Mr. Philip Barry refused to give her any of her
21 account statements.

22 Rosie went through her materials, wasn't able to
23 find anything from the Leverage Group from the 1980s. She
24 called Mr. Philip Barry, asked where the statements were.
25 Mr. Philip Barry told Rosie he had been visiting Maggie every

1 quarter, personally delivering those statements to Maggie. He
2 came over to Maggie's apartment while Rosie was there and
3 actually was, without invitation, went into Maggie's bedroom,
4 started riffling through her personal documents to look for
5 these statements which, of course, were not there.

6 He eventually mailed two statements to Rosie who was
7 acting under a power of attorney for Maggie and those
8 statements showed Maggie had two accounts with Mr. Philip
9 Barry, one valued at 240,000, one valued at 655,000.

10 In March of 2006, Rosie contacted Mr. Philip Barry
11 and demanded he close those accounts, send the money to Maggie
12 in Ohio. As you can imagine, he resisted but after many phone
13 calls, Rosie was able to get Mr. Philip Barry to send funds
14 from the 240,000 account but he refused sending money from the
15 larger account. Instead, he sent Rosie a handwritten letter
16 from Maggie from March of 2006 instructing Mr. Philip Barry
17 not to close that account.

18 At that time, Maggie was living in that assisted
19 living facility with dementia, wasn't competent and I believe
20 he procured that letter by fraud, calling her on the phone,
21 conning her into writing it.

22 In July of 2006, Rosie hired me. She wanted me to
23 help Maggie with some estate planning issues. She also wanted
24 me to help her get the money from Philip Barry. I met with
25 Maggie in July and August. I was able to determine very

1 quickly she wasn't competent. Speaking with her for 10 or
2 15 minutes, I could tell she didn't have a good grasp on her
3 finances, wouldn't be able to execute any of the documents and
4 it was apparent to me, to anybody who spoke with her, it was
5 most certainly apparent to Mr. Philip Barry who knew her at
6 that time for 18 years.

7 I called Mr. Philip Barry in July, called him in
8 August, spoke about the account. Every time I talked to him
9 about the account, his story changed. He would fast talk as
10 much as he could to try to confuse me with financial terms. I
11 suspected at that time he had stolen the money.

12 I sent him a letter August 29th demanding he close
13 the account and send the money to Maggie and the response I
14 got from him was at the end of September he forwarded to me a
15 letter written by Maggie, September 23rd, 2006, instructing
16 him to keep that account open.

17 Maybe at that point I shouldn't have been surprised
18 because I already believed he had stolen money from Maggie,
19 but I was outraged. I hit the roof when I saw that letter
20 knowing this man conned a 98-year old widow in an assisted
21 living facility, conned her the second time to write this
22 letter to him, just to cover himself, since he had stolen her
23 money, couldn't possibly close an account that didn't exist.

24 Over the next several months I contacted Mr. Philip
25 Barry often trying to get him to release the funds. I sent

1 him letters from her doctors stating she had Alzheimer's,
2 incompetent, couldn't handle financial affairs. He still
3 refused to release the money.

4 In December of '06, I contacted the Brooklyn DA's
5 Office, the New York Attorney General, Securities and Exchange
6 Commission but unfortunately I wasn't able to get anybody to
7 take action for her at that time and everyone just said to sue
8 in a civil lawsuit here in New York.

9 We chose not to do that at that time for three
10 reasons. One, it would have been too expensive to try to
11 pursue a case here. Two, we didn't think there would be any
12 hope of recovery since we thought he stole money. Three, the
13 most important reason, even though Maggie -- he had stolen the
14 money, the 600,000 account, Maggie still believed in Philip
15 Barry. That's how good a liar and con man he was, visiting
16 her at that apartment since 1988, delivering these statements,
17 or so he says, and he had gained her trust and even though he
18 had stolen the money -- we explained that to her -- she didn't
19 want to proceed with the lawsuit. We thought it would be
20 difficult on Maggie to do so at that time.

21 She died in May of 2007. I continued to pursue
22 Mr. Barry to release to the beneficiaries. The response I
23 heard over was the check is in the mail. Of course the check
24 wasn't in the mail, no money to be had.

25 Mr. Barry, over almost two decades, manipulated

1 Margaret Hartman. His actions with respect to Mrs. Hartman
2 are really egregious. He befriended her, gained her trust,
3 knew she lived alone; that she wasn't from this country, was a
4 widower with no children, really preyed upon her. I feel any
5 sentence issued ought to reflect the level of manipulation and
6 fraud that occurred in this case.

7 Thank you for your time.

8 THE COURT: Thank you.

9 MR. GOLDBERG: Your Honor, Barbara Grebin.

10 THE COURT: Good afternoon.

11 MS. GREBIN: Good afternoon.

12 I thank you for allowing me the opportunity to speak
13 today.

14 I first met Philip Barry in 1982. I was introduced
15 to him by a mutual friend, Donald Murphy. Phil was just
16 starting up the company and actively looking for clients. I
17 had told Donald I knew nothing about investing money but that
18 I calculated my pension after 30 years and knew I would need
19 more to be able to live comfortably.

20 After listening to Phil explain how his company
21 worked, I decided to open an account with him. I felt knowing
22 someone locally appealed to me versus the large anonymous
23 investment firms who I knew would never have taken my thousand
24 dollars. That was the amount I gave Phil that day.

25 Over the years, I would send him checks ranging from

1 \$50 to perhaps 100. It was money I would normally have placed
2 in a savings account. I never made over \$30,000 on my jobs.

3 I think we became friends and I invited him to my
4 home. I introduced him to friends who also decided to invest
5 with him. We would all wonder about the constancy of the
6 interest and now I realize none of us knew what a Ponzi scheme
7 was.

8 By the year 2007, I accumulated over \$200,000 as had
9 my daughter who had also started giving him money when she
10 started teaching. We both had decided it was what we wanted
11 to do with this money, use most of it for my granddaughter's
12 education. She's 12 and a member of Arista, the national
13 honor society.

14 I remember the day I told Phil this. I was in his
15 office and he simply stared at me with no expression. Today
16 there's nothing left in my account or my daughter's. I'm
17 living entirely on \$1,300 a month. I have given up my car,
18 cell phone, no computer. Medications costs me \$100 a month
19 and I consider myself lucky to be part of a drug plan.

20 I never see friends for lunch or dinner. I can't
21 take my granddaughter to the theater anymore. If I need an
22 article of clothing, I've become very adept at buying at the
23 Salvation Army. When the maintenance on my apartment was
24 raised \$70 this past January, I started taking food from a
25 Catholic charity's pantry. Their kindness was proven to me

1 that there's still decency in this country.

2 After paying my monthly bills, I'm left with about
3 \$100 for any untoward expenses that can occur which always
4 seem to happen, as you can see (indicating cast on arm.)

5 A friend gave me \$2,000 this past year in order for
6 me to have necessary dental work done. Again, her kindness
7 was wonderful.

8 I remember meeting Phil on 3rd Avenue in Bay Ridge
9 in the autumn of 2008 shortly after he claimed bankruptcy. He
10 said I'm teaching my clients to live cheap. I was floored by
11 the arrogance of that statement and although I came from a
12 poor family and know how to live cheaply. I just pray I'll be
13 able to continue staying out of debt.

14 Looking at you today, Phil, simply makes me feel
15 sad. Even my anger about the money for my granddaughter's
16 education seems to have abated. You see, it's true, we know
17 how to make do. She will get the education she deserves
18 anyway. That's my spite, but you, what a total waste in the
19 middle of your life. I'll pray for you, Phil, and you, you
20 should pray and ask God's forgiveness. You've hurt so many
21 people.

22 Thank you.

23 MR. GOLDBERG: The last victim speaker is Melissa
24 Klein.

25 MS. KLEIN: Your Honor, ladies and gentlemen of the

1 court, for the record, my name is Melissa Klein. I thank you
2 for the opportunity to speak to you about the impact Philip
3 Barry's crimes have had on my life.

4 Since meeting Philip Barry in December, 2002,
5 becoming the victim of his criminal actions has cost me the
6 following:

7 My faith in myself, other people and sometimes even
8 God.

9 My ability to trust myself and others.

10 A large portion of my life savings.

11 My ability to take financial advice to help me grow
12 what monies I have left which is extremely important because I
13 use my savings to support myself since I currently cannot
14 work due to physical disabilities, not benefiting from any
15 government assistance.

16 My social life. I used to socialize with friends
17 and date. I no longer go out to movies, plays, parties,
18 dinner or anything where I need to spend money.

19 My physical health. I had to completely stop
20 physical therapy because I no longer had enough savings to
21 cover the expense. On April 2nd I fell, cracked my knee and
22 have a hairline fracture in my left elbow. I didn't go for an
23 MRI because it's not covered by my insurance until I meet my
24 deductible. I can't afford it.

25 My mental health. I've been so traumatized and

1 detached, I needed to start taking antidepressants.

2 Finally, my optimism. I'm no longer sure happiness
3 is even possible.

4 For over 30 years, Philip Barry knew he was
5 committing fraud on family, friends and neighbors without
6 regard to the harm he caused. Even while out on bail on the
7 criminal charges, he tried to have the creditors committee
8 from the bankruptcy acquire an \$8 million loan in his name, to
9 buy back the foreclose property he originally purchased with
10 monies he had stolen from us. The land was up for sale
11 because this despicable charlatan failed to pay the taxes and
12 mortgages on the land. Only heaven knows where all the money
13 he pillaged is today because he clearly is not sharing the
14 information with any of us.

15 I believe Philip Barry is a habitual swindler who
16 lacks moral responsibility for his actions. I think his
17 ultimate act of self-indulgence and greed against society was
18 obtaining welfare and food stamps after stealing more than \$20
19 million. He has never apologized, shown remorse or even
20 believed he has done anything wrong despite admitting his
21 guilt in personal writing and off the record conversations
22 with government officials when he was looking for leniency.

23 It is extremely important to me that he serves the
24 maximum sentence for all his crimes at the highest security
25 institution allowed by law, preferably as far away from family

1 as possible so he could feel alone and isolated as I do.

2 I hope you take this information into account in
3 deciding the fate of his future, that of the potential victims
4 he will come into contact with if he's ever allowed to
5 interact with society.

6 Thank you for your consideration.

7 MR. GOLDBERG: Would you like me to speak before or
8 after Mr. Barry is given an opportunity to be heard?

9 THE COURT: I have one question before I hear from
10 you and Mr. Philip Barry. The question involves the notion of
11 audit.

12 Has there been an audit done of the monies? Has
13 there been an attempt to, in effect, trace the monies
14 Mr. Barry over the years to the properties or beyond?

15 What can you tell me about that?

16 What do you know about the money.

17 MR. GOLDBERG: Mr. Nowak will speak to that.

18 MR. NOWAK: With respect to the financial records,
19 the government was somewhat hindered in trying to go back
20 beyond five years. Oftentimes the financial institutions
21 don't retain records beyond five years.

22 You may recall at trial we introduced voluminous
23 reports through our analyst who reviewed five years of records
24 we were able to produce. Unfortunately, with financial
25 records, you can't tell the entire story where the money went.

1 We tried to do the best we could. We identified and
2 demonstrated a lot of money went out to other investors and
3 was used for other purposes, Amex bills, cash withdrawals but
4 weren't able to dig beyond that, find out exactly where the
5 money went.

6 With respect to the properties, as I mentioned, the
7 properties were heavily mortgaged. Mr. Philip Barry
8 apparently had purchased those properties but didn't in fact
9 pay for them in full, kept taking out mortgages on them as
10 time elapsed. As I mentioned, there was virtually nothing
11 recovered as a result of the auction that took place at the
12 bankruptcy proceeding.

13 MR. GOLDBERG: I would simply add that in the later
14 stages of the 30-year fraud, virtually all the money was used
15 to pay other investors. Mr. Nowak knows this much better than
16 I do, but I wanted to add that point.

17 THE COURT: Mr. Goldberg, go ahead.

18 MR. GOLDBERG: Your Honor, in the late 1970s, the
19 defendant Philip Barry began taking money from other people,
20 people who were simply seeking to better their lives and the
21 lives of their families through financial investment.

22 Regardless of what Philip Barry's intentions might
23 have been at the very outset of his Leverage Group activities,
24 what is clear is that Philip Barry began lying to his clients
25 and betraying their trust almost right away.

1 Now more than 30 years later, there is no mystery as
2 to who Philip Barry is and what he did. Philip Barry is a con
3 artist in every sense of the term and his con continues to
4 this day, the day he comes before this court for sentencing
5 and tries to obtain leniency.

6 Your Honor, you have presided over Philip Barry's
7 trial, you have read the sentencing submissions, and you have
8 now listened to the courageous and gut wrenching statements of
9 a small but representative set of victims. This court is
10 fully familiar with Philip Barry's decades-long criminal
11 conduct and the damage he has wrought, and the sentencing
12 issues are ripe for decision. I'll do my best to avoid
13 duplication as I speak on behalf of the government and,
14 perhaps more importantly, on behalf of all the victims in this
15 case.

16 I'm particularly humbled and honored to give a voice
17 to the many individuals throughout the United States who fell
18 prey to Philip Barry's scam but who, for one reason or
19 another, could not convey their views to your Honor. Some of
20 these victims are unable to travel even short distances. Some
21 of them are deceased. Some of them cannot bring themselves to
22 face Philip Barry ever again, even in this controlled setting.

23 As to this latter category of victims, your Honor
24 should know that numerous victims told the government they
25 simply want to put the matter behind them, even though we know

1 they will never really be able to do so.

2 Your Honor, I would like to address three issues.
3 First, Philip Barry has argued that he is a different kind of
4 fraudster, a less culpable criminal, because there is no
5 evidence that he used the money he stole to live a lavish life
6 style. Second, Philip Barry has cited to a handful of
7 victims, four to be exact, who apparently still believe that
8 he is an honest man who simply made mistakes and who should be
9 given a lenient prison sentence so that he can be released
10 sooner to work to repay his debts. Third, Philip Barry has
11 refused to accept responsibility for his criminal conduct and
12 has shown an utter lack of remorse.

13 As the government told the jury during the trial,
14 there is no evidence in this case that Philip Barry lived
15 large. Not surprisingly, he has tried to use this as a
16 sentencing advantage. He has argued that his intentions were
17 not to enrich himself; therefore, he should be treated
18 differently, more leniently than other scam artists who might
19 use the money they steal to buy big boats and travel the
20 world. This argument has no merit whatsoever and the
21 government asks this court to reject it entirely, just as the
22 jury did during the trial.

23 First, there is no evidence that Philip Barry lived
24 the way he did in order to benefit his clients. Rather, the
25 evidence at trial proved that Philip Barry had to limit the

1 amount of money he siphoned from the scheme so that he could
2 keep the scam going, so that he could make payments to
3 investors, lull them into thinking their money was safe and
4 causing them to make additional deposits. Put another way,
5 Philip Barry knew that his Ponzi scheme would collapse if he
6 sought to enrich himself.

7 Second, Philip Barry used his simple life style to
8 his advantage to perpetrate his fraud and to perpetuate that
9 fraud. Many of his victims were the kind of people who would
10 be put off by someone who showed material wealth. Instead,
11 these investors sought someone who invested conservatively,
12 lived a modest life style.

13 Third, just as your Honor observed earlier, the
14 government fails to see any difference in culpability between
15 the fraudster who steals \$100,000 and uses the money to buy a
16 boat and the fraudster who steals \$100,000 and uses the money
17 to deceive other victims. Either way you slice it, he has
18 stolen \$100,000 from someone who trusted him and there should
19 be little or no difference in punishment. If anything, Philip
20 Barry's conduct is more egregious because he used the money to
21 perpetuate the fraud and to ensnare other victims.

22 Next, Philip Barry has cited to a handful of victims
23 who apparently still believe he's an honest man who simply
24 made mistakes, and who should be given a short prison sentence
25 so that he can work to repay his victims. He has submitted

1 letters from four investors. We have carefully read each of
2 these four letters as well as all of the other letters
3 submitted on Philip Barry's behalf. We urge this court to
4 rely on these testimonials with great caution.

5 First, it is obvious that the four investors who
6 have written in support of a lenient sentence do not know all
7 the facts of this case. There is no indication that they
8 attended all or even part of the trial and it is highly
9 doubtful that they therefore understand the full scope of
10 Philip Barry's criminal conduct. If they had attended the
11 trial, at least the closings arguments, the government
12 believes they would have a very different view of who Philip
13 Barry is and how he should be sentenced.

14 On this point, the government read particularly
15 closely the letter submitted by James Barry, Philip Barry's
16 brother. Unlike the four investors who want to see a short
17 sentence imposed, James Barry does not request leniency for
18 his brother but rather he wrote to shed light on Philip
19 Barry's character and background.

20 It could not have been easy for James Barry to write
21 his letter but even he recognized, and I will quote from his
22 letter, "It was not until I heard the summations and verdict
23 at the last day of his trial that I fully understood the
24 extent and seriousness of the crimes he was charged with and
25 convicted of."

1 Second, the four victims who are advocating for a
2 lenient sentence appear to have a highly unrealistic view as
3 to Philip Barry's ability to pay any meaningful restitution if
4 and when he is released from prison. One of the four
5 investors wrote that Philip Barry should be released from jail
6 immediately so that -- and I quote again -- "He can get back
7 to the business of straightening out this mess."

8 As this quote reveals, this investor, like the other
9 three investors, are sadly misinformed about the magnitude of
10 the losses and about Philip Barry's ability to restore them.

11 These four letters show just how good Philip Barry
12 was at making people believe he was a good man just as he was
13 robbing them blind, and they demonstrate just how effective he
14 was at gaining their unwavering trust.

15 We are now seven months after the trial and an
16 apparently small number of investors still believe, despite
17 all the evidence to the contrary, that Philip Barry was acting
18 in their best interests. But as the trial evidence
19 established, this manipulation was central to Barry's ability
20 to carry out the scheme for such a long time.

21 Next, I want to speak to Philip Barry's refusal to
22 accept responsibility for his criminal conduct and his sheer
23 lack of remorse. Philip Barry met with the government not
24 only on August 1st, 2008, when he walked into the United
25 States Attorney's Office, but also on three separate occasions

1 in November and December, 2008, when he was represented by
2 counsel during formal proffer sessions. To be clear, Philip
3 Barry has never once said he is sorry for doing what he did
4 and he has never apologized to his victims either directly or
5 indirectly. The government respectfully submits that this
6 speaks volumes about the history and characteristics of the
7 defendant and should negate any leniency this court might be
8 inclined to bestow in this case.

9 Underneath Philip Barry's sheepish appearance lies a
10 cunning and ruthless financial predator. He is not a man
11 worthy of sympathy or mercy. He is not a man deserving of a
12 break.

13 Your Honor, it is impossible to overstate the
14 economic carnage wrought by the defendant's decades-long
15 fraud. As has been well documented in the impact statements,
16 many victims have lost their homes, retirement security,
17 children's college savings. Others went into debt in order to
18 invest with the defendant, dreaming of long term financial
19 stability for their families.

20 Instead, each of those victims is now left with
21 mountains of debt, homes leveraged far beyond their value, a
22 future of second jobs and scraping to regain years of lost
23 savings. The effects of the defendant Philip Barry's fraud
24 will last well beyond his incarceration and, notwithstanding a
25 large restitution order, the defendant is unlikely to ever

1 make his victims whole.

2 The money that Philip Barry stole didn't grow on
3 trees. It was earned over the course of many years by good
4 and decent people who worked hard as mechanics, police
5 officers and nurses, people who left home each morning, worked
6 long days for relatively little wages and then came home late,
7 people who took the money they earned and tried to invest it.
8 Your Honor, they are and were hard working people, who unlike
9 victims in some other recent Ponzi schemes, cannot absorb or
10 offset what for them are devastating losses.

11 The Probation Department has characterized the
12 impact of the guidelines loss enhancement as excessive. The
13 government respectfully disagrees. If anything, it
14 understates the scope of the fraud and the harms caused. It
15 is a cost that cannot be measured in dollars.

16 A guidelines sentence, obviously, would not make the
17 victims financially whole but it would provide justice and
18 reflect the overwhelmingly serious nature of Philip Barry's
19 30-year crime. Whatever the sentence in this case, there will
20 be no winners. It will always be a tragic story but it is a
21 tragic story for which only one person bears responsibility.
22 Every step of the way, Philip Barry had choices. He had
23 choices to stop stealing and stop lying and to mitigate the
24 losses, but every day for 30 years, he chose otherwise and now
25 he must face the consequences of those decisions.

1 Over the course of 30 years, hundreds of individuals
2 located throughout the United States put their trust in Philip
3 Barry and in return they got betrayal. During the
4 government's investigation, during the trial, and during the
5 seven months leading up to this sentencing, those same victims
6 put their trust in the federal criminal justice system. Today
7 they put their faith and trust in this court to mete out a
8 sentence that will vindicate their rights and bring justice.

9 As your Honor knows, in determining what sentence to
10 impose on a criminal defendant, a district court must consider
11 the guidelines range along with all the factors listed in
12 Section 3553(a). The government respectfully submits that in
13 light of the nature and circumstances of Philip Barry's crime,
14 the extraordinary harm he intentionally, willfully and
15 knowingly caused, only a sentence within the applicable
16 guidelines imprisonment range, currently calculated at 324 to
17 405 months or approximately 27 to 34 years, would due justice
18 in this case.

19 Thank you.

20 THE COURT: Mr. Barry, having been convicted at
21 trial, you have an absolute right, sir, to appeal your
22 conviction to a higher court. I assume Ms. Hoyes, you will
23 file a notice of appeal on behalf of your client?

24 MS. HOYES: I will, your Honor.

25 THE COURT: Mr. Barry, what would you like to say?

1 THE DEFENDANT: I hurt a lot of people and do not
2 wish to hide how bad it was. The impact on some was greater
3 than any statements or even statements after the fact today
4 can convey. The people that sat across from my desk crying,
5 the phone calls from sleepless investors at 4:00, 5:00 in the
6 morning and those who were in tears and terrified about their
7 financial future in the lobby of the bankruptcy court after a
8 particularly adverse decision, the worst was being unable to
9 immediately help them. I think about them and all of the
10 other investors every day and will always do so. I'm
11 profoundly sorry for what I was responsible for and will
12 always be so. I never intended nor even expected anything
13 like this to happen.

14 As to how it happened, the expression, "The road to
15 hell is paved with good intentions" is certainly applicable
16 here. I would add that no one plans to get lost in the woods.
17 It just happens one step at a time.

18 In my case, those steps were a whole series of
19 lesser than two evils' choices and by late in the day,
20 unknowingly, those steps had taken me deeper and hopelessly
21 lost as I grew accustomed to the dark.

22 All my personal history and characteristics indicate
23 that this offense was a departure from the rest of the nature
24 of my life. Since there will be no longer any need to keep up
25 appearances that everything is financially okay, there will

1 never be a cause to repeat any illegality.

2 General deterrence is also a minimal factor because
3 no one ever wants to live my life. The press even made it
4 clear that there was nothing in my life style to envy.

5 There should be no doubt about my intention
6 regarding restitution. It was my habit to work an average of
7 80 hours a week and I did so continuously up until 2:00 a.m.
8 of the day of my conviction. I will lawfully and diligently
9 resume working to make restitution to victims on the first day
10 that this court will allow.

11 The government has taken the position that
12 restitution will be unlikely because, with a felony
13 conviction, I would not be permitted to work in the financial
14 industry again. I was, however, a part-time radio host in
15 New York for 25 years. I left it voluntarily to devote all my
16 time to the business but was told by management that I would
17 be welcomed back at any time.

18 The type of show I did in the latter years was a
19 political talk show. The listenership level of this type of
20 show has grown to an extent that any successful host makes a
21 very high income in this field.

22 Paying victims is something I would do even in the
23 absence of an order of restitution because I have a solemn
24 moral duty to the people who trusted me to do so and that is a
25 law which is higher than the laws of man.

1 Any trust, if it is possible, as to my intentions to
2 vigorously dedicate myself to restitution and meticulously
3 avoid illegality that his Honor may factor into his decision
4 today will never be betrayed. Thank you, your Honor.

5 THE COURT: Thank you, Mr. Barry.

6 Well, I don't know if I'm being set up for sure, but
7 perfect justice in this case would involve a power that
8 neither I nor any judge or any human, for that matter, has and
9 that's very frustrating to sit here as a court and to listen
10 to the victims, not only the ones who spoke but listen to the
11 other victims as well and hear these sad stories of
12 extraordinary betrayal.

13 I don't think it's at all about the life style, with
14 all due respect. Sure, you're a curiosity to me, Mr. Barry,
15 for a number of reasons, not the least of which is how you
16 could do what you did to people who clearly trusted you.
17 Mr. Madoff is not the paragon of a common thief. They come in
18 all sizes and shapes, some with a fancy life style, some
19 without.

20 It's very difficult to find the right words to say
21 to people who come to court looking for justice and feeling
22 reasonably confident they'll probably go away feeling
23 disappointed.

24 Mr. Goldberg used the word and I agree with him,
25 there are no "winners" in this case. It is a sad story of

1 predatory conduct that is almost unimaginable -- almost
2 unimaginable.

3 I recall one of the witnesses at trial, a
4 businessman, I think from Cincinnati, came up periodically to
5 the city with his wife to enjoy the city, see a show, do some
6 shopping and he met Mr. Philip Barry with his wife at the bar
7 at the St. Regis Hotel. He struck up a conversation, became
8 acquainted and ultimately he became an investor.

9 I recall in particular his embarrassment over what
10 had happened. He was not a careless investor. He was
11 cautious. He was careful. He did some homework but
12 Mr. Barry, in his skillful way, was ultimately able to give
13 this chap the level of comfort he needed, as he's given to all
14 these people to part with their hard-earned savings. I did
15 say, as I said, almost unimaginable.

16 I am required by the law to impose what the law
17 regards as a reasonable sentence. I am required to impose a
18 sentence that is sufficient but not greater than that
19 necessary to achieve legitimate sentencing objectives, those
20 objectives, to punish Mr. Philip Barry and we all know he
21 deserves it -- I hope he knows he deserves it -- in punishing
22 him, to perhaps deter others who might be inclined to
23 victimize honest, decent people. There's nothing I could do
24 today that would take away the pain, is going to make the
25 suffering any easier but, perhaps, in the sentence of the

1 court, will discourage some other fast-talking hustler
2 somewhere down the road from victimizing people who deserve a
3 far better fate as a reward for a life well lived.

4 Counsel know I'm no fan of punishment for
5 punishment's sake. I think it's a card too often overplayed,
6 but in this case, given everything I know about Mr. Barry, his
7 fraud, his history of lies, I feel compelled to impose a
8 significant sentence.

9 I'm going to impose a sentence of 20 years on each
10 count to run concurrently. On count one, restitution in the
11 amount of \$24,146,540, \$100 special assessment on each count.
12 There is no fine. Restitution, if that day ever comes, is of
13 course, paramount.

14 As a special condition there are three years of
15 supervised release. Mr. Barry will be required to make full
16 financial disclosure to the court, to the Probation Department
17 periodically when requested.

18 There are no open counts. Mr. Barry is advised of
19 his right to appeal.

20 Is there anything further?

21 MR. GOLDBERG: Not from the government.

22 MS. HOYES: I would ask Mr. Philip Barry be
23 designated to a facility close to New York.

24 THE COURT: I will make that recommendation. I'm
25 fully aware of the feelings of some of the victims. I

1 understand them, but Mr. Barry is going to pay for almost the
2 rest of his adult life and to the extent contact with family
3 and helping him survive that 20 years, I'm not adverse to it.

4 I adopt the factual findings of the report as
5 revised in the addendum and the guideline as previously
6 stated.

7 Thank you and good day.

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